Some Early Legislation and Legislators in Upper Canada

By

THE HONOURABLE MR. JUSTICE RIDDELL,
L.H.D., LL.D., &c.

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It is a matter of regret that the early statutes of Upper Canada are not available for the ordinary practitioner; they are full of interest, historically and otherwise.

Of course, it is well known that at the time of the conquest of Quebec—and consequently of Canada—in 1759 and 1760, what was afterwards Upper Canada, was not settled. Accordingly, the proclamation of 1763 which introduced or purported to introduce the English law, civil and criminal, into Canada, did not practically affect that district. The Quebec Act of 1774, 14 Geo. III., ch. 83, did, however; for, before it was repealed, Upper Canada had a considerable number of inhabitants, chiefly from the revolting colonies to the south. This Act reintroduced the French civil law, although it left the English criminal law in full force. Much discontent was manifested by the English-speaking colonists of Upper Canada at being subjected to French law; and when the Act of 1791, 31 Geo. III., ch. 31, made Upper Canada a separate province, her first Parliament abolished the old Canadian or French law, and introduced the law of England for the decision of all matters of controversy relative to property and civil rights, and also introduced the English rules of evidence. This is found in the very first chapter of the statute of the first session of the first Parliament of Upper Canada.

The second chapter established trial by jury in all actions, real, personal and mixed, and authorized the jury, if so minded, to bring in a special verdict. In the French system the jury had no place; and the French-Canadian did not hesitate to express his wonder that the English should think their property safer in the determination of tailors and shoemakers than in that of their Judges.

The third chapter established "one just beam or balance, one certain weight and measure, and one yard, according to the standard of His Majesty's Exchequer in England." The lineal and superficial measures were the same then as now, but the gallon, etc., somewhat smaller, being the same as those still used in the United States.

Chapter 6 made a Court for small debts, the ancestor of the present Division Court. It authorized any two or more Justices of the Peace to sit and hold a Court, to be called a Court of Requests, on the first and third Saturday in every month, to try any claim not exceeding 40 shillings, Quebec currency. This was what was also known as Halifax or Provincial currency, a shilling equalled 20 cents. These Courts remained practically unchanged till 1833—their jurisdiction was extended in 1797, by 37 Geo. III., ch. 6, and in 1816 by 56 Geo. III., ch. 5—in 1833, by 3 Wm. IV., ch. 1, it was provided that Commissioners should be appointed by the Governor or Lieutenant-Governor to sit and hold the Court of Requests. This Act after being amended in 1837 by 7 Wm. IV., was itself repealed in 1841, by 4 & 5 Vict., ch. 3, which provided for Division Courts to be presided over by the Judge of the District Court of the District in which the Division Court was situated. This introduced substantially the present system. We shall have occasion to consider the District Court later.

Chapter 7 regulated the tolls to be taken in flour mills, fixing them at not more than one-twelfth. This has come down unchanged to the present time, R. S. O. (1897), ch. 140, sec. 1.

Chapter 8 provided for a gaol and court-house in every district. Lord Dorchester, the Governor of Canada, had, 27th July, 1788, by proclamation, divided what afterwards became Upper Canada, into four Districts, Lunenburgh, Mecklenburgh, Nassau and Hesse. The Upper Canada Act which we are now considering, changed the names to Eastern, Midland, Home and Western, and directed that the gaols and court-houses should be placed in New Johnstown (Cornwall), Kingston, Newark (now Niagara), and for the Western district "as near to the present court-house, as conveniently may be."

In 1816, it was directed that the gaol and court-house for the Home district should be erected at York (now Toronto), 56 Geo. III., ch. 18.

We shall meet these Districts again, and pass over them for the time being.

Chapter 4, abolishing the summary proceedings in the Court of Common Pleas in actions under £10 sterling, and chapter 5, providing for the appointment of firemen, we also pass over.

The above constitutes the legislation of the first Parliament of Upper Canada during its first session at Newark beginning Monday, September 17th, and ending Monday, October 15th, 1792.

But there were other matters of great interest at this session.

On the 19th September, the Secretary of the Province presented for the consideration of the House, a signed and sealed instrument delivered to him by Philip Dorland of Adolphustown in the county of Lennox. This set out a "certain writ under the great seal of this Province of Upper Canada . . . directed to the returning officer of the County of Prince Edward and District of the Township of Adolphustown" requiring him "to send one knight girt with a sword, the most fit and discreet to represent the said County"; also an election by the freeholders, of Philip Dorland; that he, Philip Dorland, being "one of the persons commonly called Quakers," could not take the oath prescribed for members of the House, but he would make a declaration to the same effect. He then asked that if he could not sit without the oath, a new writ might issue. The House ordered a new writ to issue, as Dorland "was incompetent to sit or vote in the House without having taken and subscribed the oath set forth in the Act of Parliament."

On Saturday, September 29th, Mr. Colin McNabb, as preventative officer, was "ordered to attend at the Bar of the House to give information respecting the contraband traffic carried on in this district, as far as the same has come within his knowledge."

It is time, now, that we enquire into the personnel of the Legislature. Much of my information as to those I owe to two papers by C. C. James, Esq., C.M.G., LL.D., contributed to the Royal Society of Canada, in 1902 and 1903.—vol. 8, sec. 2, pp. 93 *sqq.*, and vol. 9, sec. 2, pp. 145 *sqq.*, respectively.

We may disregard Lord Dorchester, the celebrated Sir Guy Carleton, who was Governor-General of Canada—but

Lieutenant-Colonel John Graves Simcoe, the Lieutenant-Governor, is not negligible, for it is certain that he took a personal interest in much of the legislation.

There was a Legislative Council appointed by the Crown for life, and a Legislative Assembly to be periodically elected by the people; the electoral franchise was almost universal suffrage, as the qualification was placed very low—in counties, land worth 40 shillings sterling per annum, and in towns the possession of a dwelling house and lot worth £5 per annum, or being resident for 12 months and having paid rent to the amount of £10 sterling.

There was also an Executive Council referred to in an indefinite way in sec. 38 of the Act; the members were appointed by the Crown, and were not necessarily members of either House—they held office at the will of the Crown. They corresponded more nearly to the cabinet of the President of the United States than to anything now extant in the British world; and were not unlike the Privy Council as it then existed in England.

Of course, the Executive Council formed no part of the Parliament, but there can be no doubt of the accuracy of the following passage to be found in an address to the King by the Legislative Council, April 19th, 1836:—

"For many years the Legislative Council of Upper Canada consisted of but four or five members, connected with the Executive Government by the most confidential relations, and forming in reality a body scarcely distinct from the Executive Council of the Colony."

A number of legislative councillors, four in all, had been appointed by the Home Government before Simcoe arrived in Canada. One of these was William Osgoode, who was the first Chief Justice of Upper Canada, and afterwards, in 1794, appointed Chief Justice of Lower Canada; he was an English barrister of good standing. Osgoode Hall is called after him.

Peter Russell was also appointed in England. He became Administrator of the Government in 1795, on Simcoe's resignation; and some scandal was attached to his name, arising from his practice of making grants of Crown lands to himself and his sister, while he was Administrator.

Alexander Grant was the only councillor appointed among the first lot who was at the time in Canada. He was commonly known as Commodore Grant. He also became

Administrator—this was in 1805, on the death of Lieutenant-Governor Hunter.

William Robertson had also been appointed; he had been a resident of Detroit, then and until 1796 part of Canada; but had gone to England in 1790, and never afterwards came to Canada. He resigned shortly afterwards, being in June, 1793, replaced by Æneas Shaw.

There were consequently only three councillors with Simcoe: and as the Act, 31 Geo. III., ch. 31, sec. 3, required at least seven councillors, these were not a majority—and consequently not a quorum—of the council. Accordingly Simcoe had James (Jacques) Baby appointed—he lived in Detroit, and was of a well-known French-Canadian family.

Osgoode and Russell arrived in Canada in June, 1792, and Osgoode, Russell, Grant and Baby were sworn in as members of the Executive Council at Kingston, in July, 1792—writs of summons calling them to the Legislative Council, were on the 16th of that month issued to these four, and also to Richard Duncan, William Robertson, Robert Hamilton, Richard Cartwright, Jr. and John Munro (of Matilda), Hamilton took part in the prosecution of Gourlay in 1819, and was said to have acquired 100,000 acres of Crown lands from the lots granted to sons and daughters of U. E. Loyalists. Cartwright was the ancestor of those of that name familiar in Canadian legal, military and political annals. He was the grandfather of Sir Richard Cartwright, and was even before his appointment to the Legislative Council, a Judge of the Court of Common Pleas (the Court of Common Pleas, we shall meet again). J. S. Cartwright, the present Master in Chambers, and J. R. Cartwright, the Deputy Attorney-General, are also grandsons.

Osgoode was the speaker of the Legislative Council, being appointed by the Lieutenant-Governor under sec. 12 of the Act; and Messrs. Baby, Hamilton, Cartwright, Munro, Grant and Russell all attended during the session.

A provision in sec. 6 for hereditary rank entitling to a seat in the Legislative Council, never was in fact brought into force.

On Monday, July, 16th, 1792, Simcoe issued a Royal proclamation, dividing Upper Canada into 19 counties; and directing the holding of elections for 16 representatives in the House of Assembly. We are sometimes apt to say that Ontario is divided into counties, and the counties into town-

ships; but historically, in many cases, the townships came first, and the counties were formed by a grouping of townships.

The counties formed by Simcoe's proclamation were: 1, Glengarry; 2, Stormont; 3, Dundas; 4, Grenville; 5, Leeds; 6, Frontenac; 7, Ontario; 8, Addington; 9, Lenox; 10, Prince Edward; 11, Hastings; 12, Northumberland; 13, Durham; 14, York; 15, Lincoln; 16, Norfolk; 17, Suffolk; 18, Essex; and 19, Kent. All these names are still used except Suffolk; but "Ontario" is now applied to a different part of the province: what is now Ontario was in those early times almost wholly destitute of inhabitants—"Ontario County" was then the islands west of the Gananoque river.

Glengarry had two members. For the first riding Hugh Macdonell was returned; for the second, his brother John, who became the Speaker of the first House. As he was a Roman Catholic, he occupied a dignity which he could not at that time occupy in any other part of the British Dominions, except Lower Canada. These two brothers were U. E. Loyalists, and were the maternal uncles of Lt.-Col. John Macdonell, who was Brock's *aide-de-camp,* and was killed with his chief at the Battle of Queenston Heights in the war of 1812. He was also Attorney-General of Upper Canada: a mural plate to his memory is to be found in the east wing of Osgoode Hall.

Stormont was represented by Lieutenant Jeremiah French, a U. E. Loyalist from Vermont.

Dundas sent Alexander Campbell, of whom little is known, or at least recorded.

Grenville sent another U. E. Loyalist, Ephraim Jones, the father of Jonas Jones, afterwards a Judge of the (King's) Queen's Bench; he had also two sons-in-law, who achieved the same distinction, Levius P. Sherwood and Henry John Boulton.

Leeds and Frontenac were allotted one member; John White, an English barrister, who had been appointed by the Home Government, Attorney-General of Upper Canada, and had come out in June, 1792, was by Simcoe's influence elected member. He was killed in a duel some years after.

Addington and Ontario sent Joshua Booth, a U. E. Loyalist, who died in the war of 1812.

Lenox, Hastings and Northumberland had one representative—and Lieut. Hazelton Spencer, also a U. E. Loyalist,

was elected. ("Lenox" was the spelling at that time; now the word is spelled with two n's).

Prince Edward and Adolphustown had one member (for the township of Adolphustown was detached from Lenox for electoral purposes). Philip Dorland was elected, but not taking the oath required by sec. 29 of the Act, 31 Geo. III., ch. 31 (as he was a Quaker) a new writ was issued, and Major Peter Vanalstine was elected in his place—they were both U. E. Loyalists.

Durham, York and first Lincoln sent Nathaniel Pettit, of Grimsby, a member of the Land Board of Nassau District.

The second riding of Lincoln sent Col. Benjamin Pawling, who had been in Butler's Rangers during the Revolutionary war.

The third riding of Lincoln sent Isaac Swayzie, who had been a noted scout on the British side. His enemies called him a "spy"—a mere difference in terminology. He later took a prominent part in the prosecution of Gourlay; and it is said narrowly escaped prosecution for the murder of William Morgan, who had threatened to disclose the secrets of Freemasonry, and who mysteriously disappeared. The mystery has never been wholly cleared up; but it was made evident that Swayzie had nothing to do with Morgan's abduction and death, notwithstanding his boast that he had.[1] He undoubtedly was a Freemason, however.

The fourth riding of Lincoln and Norfolk together had one representative. Parshall Terry was elected; he was one of Swayzie's bondsmen (v. the note[1]) and afterwards was drowned in the Don in 1808, having removed to York when Simcoe made the change.

[1] This is told of him in Dent's "Upper Canada Rebellion," and should be taken *cum grano*. That he had enemies was to be expected, and indeed is fairly certain; there is on record a petition by him, of April, 1790, to the Land Board of Nassau District, "setting forth that from his character having been traduced he had been prevented from enjoying the privileges of other loyal citizens." The Board found that he had produced sufficient proof that his character had been misrepresented; and held that he should receive the quantity of land his services entitled him to as a volunteer in the British army at New York

He was not a member of the second Parliament. When that was in existence, the following misfortune befel him (or some other of the same name, unknown to fame) as appears by the Term Books at Osgoode Hall: On Monday, April 20th, 1795, an information for sedition was filed by the Attorney-General, John White, against Isaac Swayzé, and a *capias* was granted to bring him before the Court to answer it. The Court of King's Bench, on that application, was composed of William Dummer Powell, Puisné Justice, and Peter Russell, sitting on Special Commission. On Wednesday, April 22nd, Mr. Swayzé appeared and pleaded "not guilty," giving

Suffolk and Essex sent Francis Baby, a prominent Canadian of French descent, and like the Macdonells a Roman Catholic.

Kent sent William Macomb and David William Smith,† the former of North of Ireland descent, and the latter, son of the commandant at Detroit.

This first session was held it is said by some—but there seems to be a doubt—in Freemasons' Hall at Newark (see note 10 post 36). The first name of what is now Niagara-on-the-Lake was Niagara, then it was successively called Lennox, Nassau and Newark. As Newark it was the capital of Upper Canada until after the selection of Toronto was made—the name being changed by Simcoe from Toronto to York in honour of the Duke of York, the King's brother. Newark had been chosen by reason of the proximity of forts held by the British; Simcoe expected that the British would continue to occupy the forts on the right side of the Niagara River. A guard from the 5th Regiment was kept on duty during the whole session—the Lieutenant-Governor attended in state accompanied by a guard of honour and opened Parliament by a speech from the Throne in traditional British form—and Upper Canada was fairly launched on her free career.

It was no doubt due to the presence of such lawyers as Chief Justice Osgoode and Attorney-General White in the two Houses, that the legislation is couched in such accurate and efficient language.

two sureties, Parshall Terry and Essai Daiton, in £50 each, himself in £100, to appear on Friday next to answer to the information against him. Friday, April 24th, a *venire* was directed to issue returnable Friday next to try the issue, and Mr. Swayzé gave new sureties, John Wilson and Samuel Pew. May 1st, a jury was sworn, whose names are given, and these, on May 2nd, "by their foreman, Andrew Templeton, find the defendant guilty." He then found sureties, William Reid and John Hainer to appear for judgment the first day of Trinity Term, July 20th. On that day he entered into a recognizance himself in £200 P.M. (*i.e.*, provincial money), and George Forsyth and Joseph Edwards in £100 each, to appear Friday, July 24th. There the Court sentenced him to pay a fine of £10 P.M. and stand committed until it should be paid, and also to enter into a recognizance with two sureties for his good behaviour for two years.

He afterwards was elected for the third, fourth, sixth and seventh Parliaments, dying in 1828.

The name is spelled "Swayzie," "Swayze," "Swayzé," "Suayze" and "Swayzy" in different places.

†David William Smith, Deputy Judge Advocate, of Newark, received a license dated at Navy Hall, July 7th, 1795, under the hand and seal-at-arms of Governor Simcoe, countersigned by W. Mayne, Acting Secretary, authorizing him to be and appear as an advocate or attorney in all and every of His Majesty's Courts. He afterwards removed to England, became a Baronet in 1821, and died in England, 1837, at the age of 73.

SECOND SESSION.

The second session of the first Parliament met at Newark, Friday, 31st May, 1793, the Legislative Councillors present being Osgoode, Russell, Grant, Cartwright, Baby and Hamilton. The session lasted till Tuesday, 9th July, and was not unfruitful.

The first chapter provided for the better regulation of the militia of the Province. Before this time a regulation passed at Quebec in 1777, had been in force, but it was now repealed: it had, indeed, given great offence even in Quebec, long before. It had provided for compulsory service on very insufficient pay, for payment at fixed rates for labour rendered, etc.; and generally had all the defects and faults and few of the advantages of a system of *corrée*. It was petitioned against: and the attempts of Hamilton, the Lieutenant-Governor to enact a new militia law led to his recall in 1785.

War was in 1793 going on between France and England; the people of the United States (speaking generally) were strongly in favour of France, and although Washington issued a proclamation of neutrality, the people and the Government of Upper Canada lived in constant dread of an invasion from the south, a dread that was afterwards shewn to be fully justified by the war declared by the United States in 1812. This war it is now reasonably certain had for its main purpose the acquisition of Canada.

The speech from the Throne by Simcoe recommended an early remodelling of a militia bill on account of the war with France. The House did not delay, and by July 2nd they had agreed upon legislation.

This authorized the appointment of a Lieutenant in each county and riding with power to call out, arm, array and train militia once a year—each Lieutenant to appoint a Deputy-Lieutenant and "a sufficient number of Colonels, Lieutenant-Colonels, Majors and other officers" to do the training (we have seldom been lacking in colonels)—the militia to be composed of all male inhabitants from 16 to 50 years of age, and in case of emergency to be liable to be called on to serve in any part of the Province. Provision was made for division into regiments, companies, etc. Section 22 excused "the persons called Quakers, Mennonists and Tunkers" from serving, but they were to pay to the Lieutenant, each, per annum, 20 shillings in times of peace and £5 in time of actual invasion or insurrection. Special legisla-

tions for these classes of people will be found more than once in subsequent years.

The second chapter was the beginning of our municipal system, providing as it did for the election of parish or town officers. It authorized the inhabitant householders of any parish, town or township, reputed township or place to elect a parish or town clerk, assessors, collectors, overseers of highways, pound-keepers, town-wardens or church-wardens, high constables, etc.

Chapter three was the first of our assessment acts, and it also provided "for the payment of wages to the Members of the House of Assembly." Frequently we hear it said of Members of Parliament that they are the servants of the people; but we do not nowadays hear of them being paid "wages"—the sum paid them is dignified by the name "indemnity." But the blunt plebeian word was that used in England so long as the practice itself lasted. From the earliest times payment was made to Knights of the Shire and Burgesses: and in 1323, by Statute of 16 Edward II., the wages were fixed at four shillings per day for a Knight and two for a Burgess or citizen. These payments were made by the constituency, and continued regularly until the end of the reign of Henry VIII. When the time came to incorporate Wales with England, the Act of Parliament providing for representation of Wales, passed in 1535-6, 27 Henry VIII., ch. 26, provided that towns should pay wages to their representatives, and the second Act, passed in 1543-4, 34 and 35 Henry VIII., ch. 26, had similar provisions. When the universities received the right to send representatives to Parliament, it was provided that the burgesses were to be at the charge and costs of the Chancellor, masters and scholars; there is ample evidence that the members for the University of Cambridge in 1603-4, nearly if not quite the first to represent a university, were allowed five shillings per day for their expenses.

The practice gradually died out. The oft-repeated story that the well-known Andrew Marvell, who sat for Hull in the reign of Charles II., was the last member of the Commons to receive wages, is not true, for in 1681, three years after Marvell's death, King, who had been M.P. for Harwich, obtained a writ from the Chancellor for his expenses as member of the House. But so far as appears it may be con-

sidered that Marvell was the last to receive a regular salary in this way. Lord Campbell seems to think that the writ never was abolished, but could be claimed as of right. However that may be, the payment of wages to members died out in England more than two centuries ago, and they served without remuneration until the other day.

Many looked upon it as part of the constitution that the Commons should serve at their own expense, but it is not reported that any very dire calamity has followed the new measure.

It is to be noted that both in England and in Canada the present method is payment by the State; but as we shall see, the ancient method in England was followed in Upper Canada at first, and the constituencies were liable for the wages.

In the Irish Parliament, the practice of paying members also prevailed, the freeholders being assessed and the money collected by the Sheriff: in 1666 a Bill passed the Irish Commons abolishing wages for its members entirely; but this was rejected by the Irish House of Lords, and the old law continued until the Union in 1800.

In Scotland as early as 1587 there was statutory provision for wages to be paid to members by the freeholders: further legislation took place in 1648 and 1661. The "Commissioners" or members for shires were by this last Act to receive five pounds Scots (*i.e.*, 8 shillings and 4 pence sterling) per day. These wages were not paid after the Union with England in 1707, the last Act providing for them being in 1690: when, seventeen years afterwards, the Union came about, all wages and allowances from constituencies were allowed to lapse.

However, the "wages" given in 1793 in Upper Canada did not alarm by excess. Section 30, after reciting that "it was the ancient usage of England for the several members representing the counties, cities and boroughs therein, to receive wages for their attendance in Parliament," enacted that every member of the House of Assembly should be entitled to demand from the justices of the peace of the district in which his riding was situated, a sum not exceeding 10 shillings per day (*i.e.*, $2) for each day he had been engaged in attendance on the House, and been necessarily absent from his house, the amounts to be paid out of the

rates. This was slightly amended ten years after by (1803) 43 Geo. III., ch. 11.[2]

Chapter four provided for laying out and repairing highways by the agency of Commissioners or overseers, the begin-

[2] That this provision for the wages of members of the popular House was not a dead letter is seen from the records at Osgoode Hall. For example: In Michaelmas Term, 59 Geo. III., Nov. 13th, 1818, in the Court of King's Bench (*præs.* Powell, C.J., Campbell, and Boulton, JJ.), a *mandamus nisi* was issued to the Justices of Gore, requiring them to issue an order to the treasurer of the district for the payment to Richard Hall, Esq., a member of the Commons House of Assembly of Upper Canada, of the sum of thirty pounds, being the amount of his wages for sixty days' attendance at the last session of the Provincial Legislature, out of the monies which may come into his hands under and by virtue of any Act of the Provincial Parliament. And a similar order to pay James Durand, Esq., Member of the Assembly.

These were made absolute April 17th, 1819.

Other instances may be of interest:—

"At a meeting of the Quarter Sessions for the District of Newcastle, holden at Haldimand, April 10th, 1804, at which were present Timothy Thompson, Benjamin Richardson, Asa Burnham, Joseph Keeler, Joel Merriman, John Spencer, Leonard Soper, Asa Weller, Elias Jones and Richard Lovekin, Esquires, the following order was made: "The Magistrates in Quarter Sessions assembled in the district of Newcastle, the 10th of April, 1804, order that the sum of forty-five pounds, ten shillings, be collected in the county of Northumberland to compensate David M. Rogers for services as Member of the House of Assembly for the years 1801, 1802, 1803, and 1804.

"(Sgd.) Tim'y Thompson,
"*Chairman.*"

And on April 9th, 1805, this order was made: "Ordered that the sum of nine pounds, ten shillings, be collected in the county of Northumberland for the wages of David Macgregor Rogers, Esquire, Member of the House of Assembly, representing the counties of Hastings and Northumberland, for his services during the first Session of the Fourth Parliament.

"April Sessions, Haldimand, 9th April, 1805.

"Alex. Chisholm,
"*Chairman.*"

On April 8th, 1806, the following: "Ordered that the sum of nine shillings and five pence halfpenny, be allowed in abatement to Benjamin Ewing, collector of the rates for the township of Haldimand, for the year 1805, for the rates of persons not living in the township. The Clerk of the Peace presented the following Assessment Rolls to the Magistrates for the townships of Murray, Cramahe, Haldimand, Hamilton, Hope, Darlington. Ordered that the clerk transmit a copy of the said assessments agreeable to law. Ordered that the sum of five pounds, fifteen shillings, Halifax currency, be collected for the payment of the wages of the Member of the House of Assembly for the second Session of the Fourth Parliament in the county of Northumberland.

"(Sgd.) Benjamin Richardson,
"*Chairman.*"

On April 14th, 1807, the following: "Ordered that the sum of eleven pounds, five shillings, be collected for the payment of the wages of the Member of Assembly representing the counties of Hastings and Northumberland, for the third Session of the Fourth Provincial Parliament, being the proportion of Northumberland."

David M. Rogers was also Clerk of the Peace; he lived for a time in Prince Edward county and then removed to Grafton, Northumberland county. He represented his riding from 1796 to 1824, with the exception of one Parliament, and was active in military matters (as his descendants have been ever since). He became

ning of the wretched plan of leaving the care of highways to local authority.

Chapter five was of very great public importance. Before the conquest in 1759-60, of course, the Roman Catholic religion was practically universal in Canada, and there was no trouble in procuring the solemnization of marriage. Even after the conquest and until the influx from the United States, Protestants were few in number, and practically all lived in places of some importance like Quebec or Montreal, and a Protestant clergyman was there available. If a Protestant married in a country place it was to a "Canadienne," and her priest was good enough. But with the immigration into Upper Canada in considerable numbers of a country population, many of them Protestants, the situation was altered. By the law of England only clergymen of the Church of England could perform the ceremony, and these were scarce: according to a report made in 1792 by Mr. Cartwright, Legislative Councillor, there were none in the Eastern District, only two in the Midland, one in the Home and none in the Western. There were a few Presbyterian, Lutheran and Methodist ministers, and some Roman Catholic priests; but these were not qualified. Marriages had, however, been solemnized by these and in some cases even by laymen; and some relief was urgently needed. A Bill was introduced in the Council by Cartwright, which, with some amendments, became law.

This validated all marriages theretofore contracted between persons "not being under any canonical disqualification to contract matrimony," who publicly contracted before any magistrate or commanding officer of a post, or adjutant or surgeon[3] of a regiment acting as chaplain," or any other

Registrar of Deeds for the united counties of Northumberland and Durham, and Judge of the District Court of Newcastle District: he died in 1824, aged 52.

The Act was interpreted with some strictness. When the Act of (1820), 60 Geo. III. ch. 2, authorized representation for towns in which the Quarter Sessions were held and which had a population of one thousand, and the town of Niagara sent Edward McBride as a member to the Legislative Assembly, the Court *held*, that he was not entitled to wages: *The King ex rel. Edward McBride, Esquire, M.P., against the Justices of the District of Niagara* (1826), Tay., 542. Members for towns had to serve without wages till 1835, 5 Wm. IV., ch. 6.

[3] It seems to have been not unusual for a surgeon to tie the matrimonial knot, and it is not at all unlikely that the following instance accounts for the mention of them in the Act. Captain James Mathew Hamilton, of the 5th Northumberland Regiment of Foot, when stationed at Mackinac, married Louisa, daughter of Dr.

person in any public office of employment. For the future and until there should be five parsons of the Church of England in any one district, a J.P. might solemnize the marriage, using the form of the Church of England. It was of course quite too much to expect in the then existing state of religious toleration that any parson or minister of any other church or sect should receive such authority. The Lieutenant-Governor, Simcoe, indeed, wrote to Dundas expressing his astonishment that it had even been proposed to give such power to ministers of other denominations. At all events this proposition had to be abandoned. The Lieutenant-Governor did not like the Act which was passed, but public opinion was too strong for him and he assented to the Bill. Simcoe was most anxious for the establishment of the Church of England in Upper Canada, and bent all his energies toward that end.

The provisions of the bill were wholly unsatisfactory to many of the settlers. Some were Presbyterians who had come from Scotland, where their church was established and where Episcopalians were the dissenters; others were Lutherans whose church was established in parts of Germany. Many had come from the colonies to the south without an established church at all; not a few were members of the ancient Church of Rome, which had been the established Church in Canada till a few years before. None of these could see why their clergy were not quite as good as those of the Church of England. Petitions were signed and presented to the Lieutenant-Governor for a repeal of this marriage Act of 1793. These he treated with lofty scorn. He said that he thought it proper to say that he looked upon the petition as the product of a wicked head and a disloyal heart; but at length in 1798 an Act was passed, 38 Geo. III. ch. 4, making it lawful for a minister or clergyman of any congregation or religious community professing to be members of the Church of Scotland, or Lutherans, or Calvinists, to celebrate the

David Mitchell, Surgeon-General to the Indian Department, who performed the ceremony, as there was no clergyman of any denomination in that part of the country. The young couple were afterwards, *ex abundanti cautelâ*, remarried in 1792 by the Rev. Robert Addison, at Niagara. The entry in the marriage registrar of St. Mark's Church reads: "August 1792. Captain James Hamilton to Louisa Mitchell, his wife. They had been married by some commanding officer or magistrate, and thought it more decent to have the first repeated." The register was Mr. Addison's private book, but became the register of St. Mark's Church, Niagara, when that church was opened in 1809. Captain and Mrs. Hamilton were friends of Lieutenant-Governor and Mrs. Simcoe.

ceremony of marriage for members of their own congregation or religious community, upon the minister procuring a proper certificate from the Quarter Sessions.[4] Similar marriages in the past were also validated. This was so little to the taste of the Lieutenant-Governor that he reserved the Bill for His Majesty's pleasure. The royal assent was given Dec. 29, 1798, and the Bill became law. This made the trouble if anything more acute. So long as one Church had the monopoly it was not so bad, but when four participated, all those who were excluded insistently demanded the reason why.

The agitation was at length successful. In 1830, by the Act of 11 Geo. IV., ch. 36, the power of celebrating marriages was given to clergymen and ministers of the Church of Scotland, Lutherans, Presbyterians, Congregationalists, Baptists, Independents, Methodists, Menonists, Tunkers or Moravians, the celebrant to take out a certificate from the Quarter Sessions.

The restriction to marriages of persons one of whom at least was a member of the denomination, was removed. Former marriages "before any justice of the peace, magistrate or commanding officer of a post, or before any minister or clergyman," were validated and confirmed unless either of the parties to an invalid marriage had thereafter contracted matrimony according to law.[5]

[4] How the license was obtained may be seen from a concrete example.

At a meeting of the General Quarter Sessions for the District of Newcastle, held April 9th, 1805, at Haldimand: Present, Alexander Chisholm, Robert Baldwin, Richard Lovekin, Elias Smith, senior, Asa Weller, Elias Jones, Benjamin Marsh, John Spencer, Benjamin Richardson, Leonard Soper, Joseph Keeler, Asa Burnham and Joel Merriman, Esquires, the following took place:

"Reuben Crandel of Cramahe, appeared, pursuant to notice given at the Clerk of the Peace's office, professing himself to be a Minister of the Religious Congregation of Calvinists, and having called upon John Spencer, Esquire, Moses Hinman, Joseph Phillips, Joseph J. Losie, Benjamin Ewing, Moses Doolittle and John Phinn, all of Haldimand, members of the said congregation who openly owned and acknowledged the said Reuben Crandel to be their Minister, and the Court being satisfied that he is regularly ordained according to the rules of that society, do allow him a certificate to enable him to celebrate marriage agreeable to law."

[5] The right to solemnize matrimony was of some value, and unauthorized celebrants were proceeded against criminally. I give one case:—

In Easter Term, 42 Geo., III., April 9th, 1802, before Elmsley, C.J. and Allcock, J., a rule was issued against John Wilson, calling on him to shew cause why "an information for a misdemeanour should not be filed against him . . . for having solemnized or pretended to solemnize marriage on the 7th day of June . . last, between Paul Marin, of York, baker, and Jane Butterfield, of the same place, spinster, otherwise called Jane Burke, in contemp: of

In 1857, by the Act 20 Vic. ch. 66, the power of celebrating marriages was given to ministers and clergymen of every religious denomination in Upper Canada; in 1896, by 59 Vict., ch. 39, also to an elder, evangelist or missionary of the "Congregation of God" or "Of Christ," *i.e.*, "Disciples of Christ," and also to a Commissioner or Staff Officer of the Salvation Army. Quakers are specially provided for.[5]

the law, contrary to the statute in such case made and provided, and in profanation of religion."

This last clause is especially fine.

The rule, after two enlargements, came on before the Full Court (Elmsley, C.J. and Powell and Allcock, JJ.), in Trinity Term, 14th July, 1802, and it was made absolute.

The information was a proceeding now practically obsolete, but much in use in those days in place of an indictment.

No doubt Wilson was tried upon the information ordered to be issued against him but I do not find any record of the result.

Rev. John Carroll, in the first volume of his "Case and His Contemporaries," p. 148, sec. 17, speaking of Rev. Isaac B. Smith, a Methodist missionary, says: "He was courageous. After his ordination he ventured to marry a couple within the Province boundaries, and was, consequently, prosecuted by the privileged class, who claimed the exclusive right to celebrate matrimony. Unlike the excellent but timid Sawyer, who for a time fled the country on a similar charge being preferred against him, Smith stood his ground, searched into the law on the subject, plead his own cause, and despite the talents and legal lore of the prosecuting attorney, and the Judge's brow-beating, came off scot-clear. In this he was more fortunate than his father-in-law, Mr. Ryan, who, according to report, was banished for a similar offence, though afterwards made a subject of the Governor's clemency for his known loyalty."

"Sawyer," was Rev. Joseph Sawyer, who became Presiding Elder of the Upper Canada District of the Methodist Episcopal Church in 1808, having then been a missionary for fourteen years.

"Mr. Ryan," was Rev. Henry Ryan, of great fame in the same Connexion, but who afterwards was a prominent leader in the division which took place in 1828-9, resulting in the formation of the Canadian Episcopal Methodist Church.

I have not been able to verify the statements made as to these three ministers: there is no doubt, however, that ministers of all denominations considered it a part of their clerical functions to perform the marriage ceremony, and resented the ban put upon such act by the law.

[5] There was no dearth of denominations in 1830, when the former Act was passed.

William Lyon Mackenzie, in the Introduction to his "Sketches of Canada and the United States," 1833, says:—

"There is . . . variety enough, if we include the Canadas. Within a square of 400 miles may be found the professors of 100 religions, creeds and systems, from the Menonist, Tunkard, and Child of Peace of Upper Canada, to the Hopkinsian, the Chrystian and Universalist across the Niagara."

The Children of Peace consisted of thirty or forty families in or near the village of Hope, in the township of East Gwillimbury, about 35 miles from York, and 4½ miles from Newmarket. David Willson was their leader, but they had no written creed.

At an election at Niagara Falls, for the county of Lincoln, July 26th, 1824, Mackenzie says, p. 89: "there were Christians and Heathens, Menonites and Tunkards, Quakers and Universalists, Presbyterians and Baptists, Roman Catholics and American Methodists; there were Frenchmen and Yankees, Irishmen and Mulattoes, Scotchmen and Indians, Englishmen, Canadians, Americans and Negroes, Dutchmen and Germans, Welshmen and Swedes, Highlanders and Lowlanders."

The number of persons with this authority is fairly large; but no one is justified in getting up a little denomination of his own, and claiming the power to celebrate the marriage ceremony just because he is the minister of it. One Robert Brown tried that; he was the minister of a congregation known as "The First Christian Chinese Church, Toronto," and as such solemnized marriages. The Judge of the County Court of Toronto convicted him of the crime of unlawfully performing the marriage ceremony and the Court of Appeal affirmed the conviction: *Rex* v. *Brown* (1908), 17 O. L. R. 197.

Returning now to the Legislation of 1793.

Chapter 6 fixed the times and places of holding the Quarter Sessions in each District—in the Eastern District at New Johnstown and Cornwall, in the Midland at Adolphustown and Kingston, in the Home at Newark and in the Western at Detroit—also a Court of Special Sessions at Michilimackinac. Detroit was considered as part of Canada till 1796, and was governed accordingly—Michilimackinac was given up about the same time.

Chapter 7 is a most creditable piece of legislation. It practically abolished slavery in the Province, repealed for Upper Canada, 30 Geo. III., ch. 27, authorizing the importation of slaves into a colony. All negroes then slaves continued to be slaves, children of female slaves born after the Act served the master until the age of 25 years and then became free.

It was the Lieutenant-Governor who was responsible for pressing this legislation, though Chief Justice Osgoode and Solicitor-General Grey also deserve credit. It was by no means popular, on account of the scarcity of labour; and the old story of Canaan serving his brethren, Gen. x., 25, was made to do duty over and over again. But "the power of the Crown" was then something to be afraid of, and Simcoe got his wish.

Upper Canada had reason to be proud of her record in respect of Slavery. The number of negro slaves in the Province was not very large absolutely; but in comparison with the number of free settlers it was not insignificant; many had been captured by the Indians in their incursions into United States territory and sold to Canadians at a small price, and their labour was very valuable.

In the case of the negro Sommersett, to be found in 20 Howell's State Trials, 29, the Court of King's Bench in 1772 had unanimously decided that as soon as a slave set his foot upon the soil of the British Isles he became free. Cowper in *The Task*, in 1785, sang:—

> "Slaves cannot breathe in England; if their lungs
> Receive our air, that moment they are free;
> They touch our country and their shackles fall."

But that was in the mother country; in the Colonies the curse of negro slavery prevailed to an extent limited only by the opportunity of obtaining negroes and the supposed need for their labour. Wilberforce had only in 1787 taken up the cause—which had been a favourite for many years among the Quakers—of the abolition of the slave trade; but as yet no British Colony had spoken; and Upper Canada led the way. She had been indeed preceded in 1792, May 6, by Denmark, but she led the British Colonies and all other nations in abolishing this infamous traffic. It was not till 1807 that it was forbidden for all the British Dominions, and not till 1833 was the Act passed abolishing slavery itself. August, 1838, saw the end of slavery under the Union Jack.

Chapter 8 established a Court of Probate in the Province and a Surrogate Court in each District. The Governor, Lieutenant-Governor or Administrator was to preside in the Court of Probate, and a Commissioner in each Surrogate Court. An appeal lay from the Surrogate Court to the Court of Probate.

This system existed till 1858. In that year, by 22 Vic. ch. 93, the Court of Probate was abolished, a Surrogate Court for each county organized with a Judge with the same authority as a Judge of a County Court, and 33 Geo. III. ch. 8, was formally repealed. Our present system is substantially that of 22 Vic. ch. 93.

By chapter 9 the Lieutenant-Governor was authorized to appoint three Commissioners to consult and agree with an equal number from Lower Canada as to duties to be imposed in the passing of goods from one Province to another. This may be passed over for the time.

Chapter 10 provided for the payment of officers of the two houses. Chapter 11 for the payment of a bounty for killing bears and wolves, 10 shillings for a bear and 20 shillings for a wolf, but this was not to extend to the Western District nor was any Indian to receive any reward for such killing.

Chapter 12 provided for the appointment by the Governor of returning officers, in elections for the Assembly.

Chapter 13 provided for salaries of officers of the two Houses and for contingent expenses. This is the form; but the substance is rather different. By an Act of the Imperial Parliament in 1774, it had been provided that a duty of £1 16s. sterling should be paid for every license in the Province of Quebec for keeping a house of public entertainment or for retailing wine, brandy, rum or other spirituous liquor within the Province. The matter of duty upon wine and liquor brought into the Province had been up in the first session, but nothing came of the discussion. A bill passed the Assembly October 4th, 1792, but received the three months' hoist in the Council October 8th.

In 1793 the Committee of Ways and Means in the Assembly reported in favour of a retail license fee of £2 per annum, and a bill was introduced accordingly and was sent up to the Council July 2nd, 1793; and this bill, after some opposition, was passed by that body. As finally passed it imposed a further license fee (in addition to the former of £1 16s.) of 20 shillings for each retail license, but this was not to extend beyond April 5th, 1797. The Receiver-General was allowed to retain 3 per cent. for himself of all money raised by this method.

During this session, Peter Van Alstine, already mentioned, took the necessary oath, on the second day of the session. The day following it was ordered that such Acts as had passed or should pass the Legislature should be translated into French for the benefit of the inhabitants of the Western District and other French settlers who might come to reside within the Province, and A. Macdonell, Esquire, Clerk of the House, was employed as a French translator for this and other purposes of the House. Thus early we meet bilingualism.

A Bill to establish two annual fairs at New Johnstown did not pass; and the same fate met a proposed "Bill to relieve the inhabitants of the Western District from the necessity of bolting the grain they grind at their mills for toll."

The House was not unmindful of the privileges attached to the position of Member of Parliament. We find on Monday, 17th June, this resolution carried: "That the Speaker do inform W. B. Sheehan, Esquire, Sheriff of this district, that the House entertain a strong sense of the impropriety

of his conduct towards a member of this House in having served a Writ of Capias upon the said member contrary to his privilege, and that the House has only dispensed with the necessity of bringing him to their bar to be further dealt with from a conviction that want of reflection and not contempt made him guilty of an infringement upon the privileges of the House."

That the members of the Upper Canada House had the same privilege from arrest as a member of the Imperial House of Commons is certain—and that, not only during the sittings of the House, but for forty days before and forty days after: *Reg.* v. *Gamble and Boulton* (1832), 9 U. C. R. 546, and several other cases down to *Cox* v. *Prior* (1899), 18 P. R. 492. Accordingly the sheriff had reason to consider himself lucky in escaping the fate of others who had been guilty of somewhat similar acts.

Upon the first day of the first Parliament of James I. in 1603, a complaint was made that Sir Thomas Shirley, who had been elected a member of the House of Commons, was arrested four days before the sitting of the Parliament and imprisoned in the Fleet. A writ of Habeas Corpus was issued and he was discharged. Precedents were looked unto and the plaintiff at whose suit and the sergeant by whom the arrest was made were sent to the Tower. The Warden of the Fleet, who had persisted in refusing to obey the writ of Habeas Corpus and deliver up his prisoner, was ordered to be committed "to the place called the Dungeon or Little-Ease in the Tower." Afterwards "delivering his prisoner" and "upon his knees confessing his error and presumption and professing he was unfeignedly sorry, the Speaker pronounced his pardon and discharge, paying ordinary fees to the clerk and the sergeant." And in February, 1606, an attorney who had procured the arrest of Mr. James, a member of the House of Commons, and the officer who had arrested him, were "for their contempt committed to the custody of the sergeant for a month, which judgment was pronounced against them kneeling at the bar, by Mr. Speaker."

It is to be hoped that Sheriff Sheehan was duly grateful for the clemency shewn him.

On Monday, 8th July, the House waited upon the Lieutenant-Governor with their address to His Majesty, expressing their horror and abhorrence of "the sacrilegious murder in France," and hoping "that a conduct so baneful to every precept of Religion and law may serve to rivet the loyalty and

attachment of our fellow-subjects, as it has ours, to the best of Kings and of constitutions the most excellent." Louis XVI. had been executed the January before. This was "the sacrilegious murder," sacrilegious because Louis was King by Divine Right—and notwithstanding that his right to the Crown was statutory, the doctrine of Divine Right was dear to George III. It was, of course, George III. who was the best of Kings,[7] and the constitution as it then existed unreformed, the most excellent of constitutions. Everybody knows that it was the perfection of reason acquired by long study, observation and experience, and refined by learned and patriotic men in all ages—as Simcoe in his speech from the throne put it, "equally abhorrent of absolute monarchy, absolute aristocracy or tyrannical democracy."

It may not be without interest to see who attended the meetings of the Houses of Parliament.

During the Session of 1792, the following Legislative Councillors are noted in the proceedings as being present at some time: William Osgoode, James Baby, Robert Hamilton, Richard Cartwright, Jr., John Munro, Alexander Grant and Peter Russell. In 1793 all these were also in attendance, and in addition, Richard Duncan attended, having been sworn June 17th, 1793. He had been appointed in the previous August, and hailed from Rapid Plat.

As is the case with the Legislative Council, I do not know of any record kept of the attendance of members of the Assembly; but from the proceedings it is clear that of the sixteen members elected for the assembly in the first Parliament at least thirteen were in attendance at some time during the first session. The names of all but Joshua Booth and Parshall Terry appear as taking some part—Philip Dorland, of course, could not act.

In the second session I find the names of thirteen recorded as taking some part in the proceedings, Major Van Alstine among them. Those whose names do not appear are Hugh Macdonell, Parshall Terry and Nathaniel Pettit.

This was a very fair attendance, but it does not seem that all attended every day, as Sept. 18, 1792, a resolution was

[7] Wraxall tells us that it was King George's opposition to the claims of his American subjects that was the cause of his unpopularity with the English people; and it is, beyond doubt, true that as soon as peace was in 1783 declared, granting independence to the North American Colonies, he recovered all his lost favour with his people. There never was a King more generally loved than he, except during the years of the Revolutionary War.

passed that nine members should make a House; and this number was reduced on Oct. 10, to eight.

There had always been a difficulty in England of securing attendance of members of the House of Commons; and one statute, 6 Henry VIII., ch. 16, was passed punishing the absence of a member by deprivation of pay. No other punishment has ever been enacted in England.

Ireland was cursed with absentee members; in one instance it is said a member was an absentee for twenty years; but no means were taken to compel attendance.

In Scotland absentees were liable to a fine. It is said: "By ancient law absentees were liable to be unlawed and amerced in fines"; the fines were substantial, and "without prejudice of what further censure Parliament shall think fit to inflict."

In the Upper Canada Parliament there does not appear to have been any necessity for such measures.

THIRD SESSION.

The third session of the first Parliament began June 2nd and lasted till July 7th, 1794.

The first chapter of the legislation of this session regulated juries to be called to "serve on trials at any Assizes or Nisi Prius, Quarter Sessions or District Court." Not less than 36 nor more than 48 jurymen were to be returned in any District or place; those returned, if they did not appear, were to pay a fine not less than 20 shillings ($4) or more than £3 ($12). Section 9 provided that every juryman should receive one shilling from the plaintiff or his attorney in every cause in which he was sworn—if a view should be allowed, six jurymen agreed upon or named by the Judge or some officer of the Court had the view and were allowed each 10 shillings for each day they were so employed. The Court of King's Bench was authorized to order a special jury to be struck as in England, the fee of each special juryman to be 5 shillings.

Chapter two established a Court of Law by the name and style of His Majesty's Court of King's Bench for the Province of Upper Canada, with the same authority as the Courts of King's Bench, Common Pleas and Exchequer in England.

Before the conquest of Canada, of course the French system of Courts was the only system in Canada. From this

time until the Royal Proclamation of 1763, there were Courts presided over by the captains of militia. These Courts were set up by the conquerors as part of their military rule, and could only be temporary.

By the Proclamation of 1763, it was provided that the Governor should have the power of constituting Courts of Law and Equity with civil and criminal jurisdiction to hear and determine causes as near as may be agreeable to the laws of England. Murray, accordingly, pursuant to his instructions and his Commission, established a Court of King's Bench with civil and criminal jurisdiction with an appeal to the Governor in Council or to the King in certain cases—the Court to sit twice a year, in January and June, in Quebec—and a Court of Assize and Gaol Delivery once a year in Montreal and Three Rivers. A Court of Common Pleas was also established,—an appeal lay to the King's Bench, or if of sufficient importance to the Governor in Council or the King. Justices of the Peace were also appointed with civil jurisdiction up to £5 for a single magistrate or £10 for two sitting together. Three justices could hold a Court of Quarter Sessions with civil jurisdiction from £10 to £30.

Several departures from English precedent are manifest. The Common Pleas administered Equity, and Conservators of the Peace both singly and in the Quarter Sessions had civil jurisdiction.

Then came the Quebec Act of 1774, 14 Geo. III., ch. 83. This revoked the Proclamation of 1763, all ordinances relative to the administration of justice and all commissions to Judges, etc., made or issued under the authority of the Proclamation. It further provided for the King constituting Courts of civil, criminal, and ecclesiastical jurisdiction and appointing Judges and officers thereto.

The American invasion of Canada prevented anything being done at the time—*inter arma silent leges*—but in 1776, Courts were established for the Districts of Montreal and Quebec, and a Court of Appeal was also constituted. Courts were organized for Three Rivers, and afterwards, when in 1788, Dorchester divided what was afterwards Upper Canada into Districts, Courts were instituted also in these four Districts, *i.e.,* Luneburgh, Mecklenburg, Nassau and Hesse (this last including Detroit). These were Courts of Common

Pleas. Commissions of Oyer and Terminer were also issued to the Judges of these Courts, as occasion required.

Jury trial having been established by chapter 2 of 32 George III., chapter 4 of the same statute abolished summary proceedings in these Courts, which had formerly obtained in cases involving less than £10 sterling.

The time was now come to abolish these Courts of Common Pleas in Upper Canada, and chapter 2 of the third session became law. This constituted a Court of King's Bench, with a Chief Justice and two Puisné Justices (increased to four in 1837 by 7 Wm. IV., ch. 1) to sit at a place certain, *i.e.*, at the place where the Governor usually resided, and until such place should be fixed, at the last place of meeting of the Parliament. Four terms were prescribed; the first and original process directed to be a writ of *capias ad respondendum;* special bail also provided for, and the statutes of jeofails, etc., as in England, notice of trial, examinations *de bene esse,* costs, etc. The Courts of Common Pleas disappear and their records become records of the King's Bench. A Court of Appeal was constituted (composed of the Governor or Chief Justice and two or more members of the Executive Council) to which an appeal lay in matters over £100; and a further appeal when the amount in controversy exceeded £500 sterling was reserved to the Privy Council.

As indicating the nationality of the inhabitants of Upper Canada it may be mentioned that the notice to the defendant to be endorsed on the writ was required to be in French (according to the form given) when the "party defendant is a Canadian subject by treaty or the son or daughter of such Canadian subject": sec. 9.

This Court of King's Bench (becoming in 1839 by 2 Vic. ch. 1, Queen's Bench) continued until, in 1881, it was consolidated in the Supreme Court of Judicature. The former Courts of Common Pleas entirely disappeared in 1794, and the Court of Common Pleas created in 1849 has no relation to these whatever. In 1837 a Court of Chancery was established, presided over by the Vice-Chancellor of Upper Canada; and in 1849, 12 Vic. ch. 63, a new Common-law Court, the Court of Common Pleas, with the same jurisdiction and practice as the Court of Queen's Bench. At the same time the Court of Chancery was reconstituted with a Chancellor and two Vice-Chancellors, 12 Vict. ch. 64. These three Courts

continued side by side as the Superior Courts of original jurisdiction until 1881.

By the Act of 1794, as we have seen, the Lieutenant-Governor of the Province or the Chief Justice, with two or more of the Executive Council, constituted a Court of Appeal from the King's Bench, and the same Court became the Court of Appeal from Chancery in 1837; but in 1849 this Court of Appeal was abolished and a new Court of Error and Appeal was constituted to hear appeals from both the Common-law Courts and the Court of Chancery. This new Court was much like the Court of Exchequer Chamber in England, and consisted of all the Judges of the three Courts of first instance. In 1874, 37 Vic. ch. 7, this Court was reconstituted and thereafter consisted of Judges permanently of the Court of Appeal. In 1881, 44 Vic. ch. 5, the former system was abolished; all the Courts, Appeal, Queen's Bench, Chancery and Common Pleas, were united and consolidated into one Supreme Court of Judicature for Ontario, composed of two permanent divisions: 1, The Court of Appeal for Ontario (this had five Judges), and, 2, the High Court of Justice for Ontario: and of this High Court of Justice there were the three divisions, *i.e.*, the Queen's Bench, Chancery and Common Pleas Divisions. Later, another division was added in the High Court, viz., the Exchequer Division. Each of these divisions of the High Court of Justice had three Judges. The still recent reform effected by the Law Reform Act, 1909, need not here be considered.

I shall later speak of the defects of the original Court. It may here be said, however, that William Dummer Powell, who had been commissioned as Judge of the Court of Common Pleas for the District of Hesse, and had actually sat as such at L'Assomption (Sandwich), was after the passing of this Act appointed a Justice of the Court of King's Bench, and was afterwards, in 1816, created Chief Justice.

As the Courts of Common Pleas were abolished, it became necessary or at least advisable to constitute Courts to take their place for the trial of causes involving small amounts. In the Legislative Council, Cartwright and Hamilton caused to be entered in the proceedings their formal protest against the one Superior Court for the Province, rather than Courts of local and exclusive jurisdiction in each District.

A Court was by Chapter 3 constituted in each District, by the name of District Court, to sit where the Court House

had been (by 32 Geo. III., ch. 8), directed to be built, except "in the Western District, where the said Court shall be holden in the Town of Detroit." In 1796, by 36 Geo. III. ch. 4, s. 3, it was declared no longer expedient to hold the Court in Detroit, and it was directed to be held at the Parish of Assumption (Sandwich), or nearer the Isle of Bois Blanc—in 1801, by 41 Geo. III., ch. 6, s. 2, the place was definitely fixed at Sandwich.

The District Courts were given jurisdiction in all actions of contract from 40 shillings up to £15; this was in 1797, by 37 Geo. III. ch. 6, sec. 1, increased to £40 in cases of contracts where the amount is liquidated, and to £15 in trespass where the title to land was not brought in question.

After several amendments, the legislation was consolidated in 1822 by 2 Geo. IV., Sess. 2, ch. 2, and again with amendments in 1845 by 8 Vic. ch. 13. At length in 1849 the Districts became so multiplied that their boundaries in many cases became identical with the boundaries of Counties, and the Statute 12 Vic. ch. 78, abolished the division of the Province into Districts for judicial and other purposes and the District Courts were made County Courts by sec. 3. In the Statutes for that year they are called sometimes County Courts, sometimes District Courts and sometimes District or County Courts, but thereafter the new name, which still continues, is consistently used.

Chapter 4 authorized the Governor to grant a license to any number of His Majesty's liege subjects not exceeding sixteen, to act as attorneys and advocates in the Province. The reason for this was the scarcity of lawyers acquainted with the English Civil law in the Province. Before 1792 of course the English Civil law had not been in force, at least in theory. This Act of 1794 suspended for two years for Upper Canada the ordinance made in Quebec in 1785 providing for the profession. The Act was not abused—only some five gentlemen were licensed under it in 1803, one being D'Arcy Boulton, an English barrister who afterwards became Judge of the King's Bench, and the ancestor of a distinguished family; another, Dr. William Warren Baldwin, a prominent barrister and politician, and father of the still more celebrated Robert Baldwin.

The formation of the Law Society of Upper Canada in 1797 we shall have occasion to note when we reach that date.

Chapter 5 provided for the accounting for all fines, etc.

Chapter 6 was an assessment Act of no great consequence except that it ordered the payment in full of the wages of the members of the Assembly.

The Militia received attention in chapter 7, which authorized Cavalry and a Navy.

Chapter 8 enabled the householders of every District at their annual town meetings to determine in what manner and at what periods horned cattle, horses, sheep and swine, or any of them, should be allowed to run at large, and permitted impounding of the offending animals.

Chapter 9 amended the Act of the previous session as to highways, and was equally futile.

Chapter 10 allowed the inhabitants of the Eastern District to build a gaol (it is called in the Statutes a "goal") and Court House in Cornwall, as well as those in New Johnstown authorized by the Act.

Chapter 11 laid a duty on "Stills for the purpose of distilling spirituous liquors for sale," 1 shilling and 3 pence per gallon of the capacity of the still. The owner must procure a license, paying a fee for it of course; no one could do anything in those days without paying a fee for it—except (possibly) die.

Chapter 12 regulated the manner of licensing public houses, requiring the keeper to procure a certificate of his fitness from the magistrates of the District—the magistrates were given the power to limit the number of inns and the names of all licensees were to be published in the *Upper Canada Gazette.*

A bill to regulate the practice of physic and surgery passed the Assembly, but the Council amended it in such a way that it did not suit the Assembly; a conference was directed to be held, but nothing seems to have been done, and the bill did not pass this year. It had better luck the following session, 35 Geo. III. ch. 1.

In the Council during this session the following Councillors are noted as taking part: Osgoode, Baby, Hamilton, Cartwright, Munroe, Grant, Russell and Aeneas Shaw, who presented his summons and was sworn in, June 10, 1794. He was a Scotsman, the lineal descendant of Macduff, first

Thane of Fife: of great mental and bodily vigor, he served in the Revolutionary war, and was created a Major-General in Upper Canada. At his house, Oakhill, he entertained the Duke of Kent, father of Queen Victoria, during his tour in Canada in 1799. The Major-General died in 1813 during the war with the United States, it is said from over-fatigue.

We have not the complete record of the Assembly of this Session—the only available copy extending only to June 11th; in what is preserved, I find the names of twelve members mentioned as taking part—Speaker Macdonell, Hugh Macdonell, Alexander Campbell, Ephraim Jones, John White, Joshua Booth, Hazelton Spencer, Benjamin Pawling, Isaac Swayzie (this name is spelled Swayzé in the report), Parshall Terry, David William Smith; no trace is found of Jeremiah French, Peter Van Alstine, Nathaniel Pettit or William Macomb, although they all may have been in attendance.

FOURTH SESSION.

The fourth session of the first Parliament also met at Newark like its predecessors; it lasted from July 6th to August 10th, 1795. We have no records of the proceedings except the statutes themselves.

The first chapter regulates the practice of physic and surgery. I have thus spoken of it in a paper prepared for the Ontario Medical Association, and published in the "Canadian Journal of Medicine and Surgery," September, 1911:—

"At the time of the separation of our Province, and for some time thereafter, there was no regulation as to who should practice medicine, or "physic," as it was called. Many of the practitioners were old army or navy surgeons; some were importations from the United States, but most of those who treated disease were mere empirics. There had, indeed, been an Act or Ordinance passed by the Council of the old Province of Quebec in 1788, forbidding anyone to practise without a licence from the Governor—which licence was to be granted without an examination to all graduates of any British university and to all surgeons of the army or navy; but this was largely a dead letter in the newer parts of the colony, as our country was at that time.

In 1795 the Provincial Parliament of Upper Canada passed an Act, 35 Geo. III. ch. 1, forbidding the sale of medicine, prescribing for the sick and the practice of physic, sur-

gery or midwifery by anyone who had not been licensed. The Governor was to appoint a board to examine all who should apply for a licence, and those approved of by the Board, upon the examination were to be granted a licence, the fee being £2 currency, *i.e.*, $8. A penalty of £10, *i.e.*, $40, was imposed for selling medicines, prescribing for the sick or practising physic, surgery or midwifery without a licence. An exception was made for surgeons or surgeons' mates in the army or navy, and for those who had been practising at the time of the passing of the Act of 1791; these, however, were not to take apprentices or students. There is no record of anything ever having been done under these provisions; the Act was found unworkable, and it was accordingly repealed in 1806 by 46 Geo. II. ch. 2, and the profession was again much at large, although the Act of 1788, already spoken of, was still nominally in force. Much public dissatisfaction was the result, and at length a new Act was passed in 1815, 55 Geo. III. ch. 10, which forbade prescribing for the sick or the practice of physic, surgery or midwifery without a licence —saving the case of graduates of a university in British Dominions, surgeons and surgeons' mates in the British Army or Navy, and those who had practised before 1791. The prohibition against these taking apprentices or students was not repeated in this Act, nor was the prohibition against selling, etc., medicines. And it was expressly provided that women might practise midwifery without a licence. The Governor was to appoint an examining and licensing Board.

Nothing seems to have been done under this Act either, and it was repealed in 1818 by 59 George III. ch. 13, which, however, contained much the same provisions."

I do not here trace the legislation further.

Chapter 2 prohibited any person coming from any place not within his Majesty's Dominions at the time of the passing of the Act, and not being a *bona fide* subject of His Majesty for seven years before the passing of the Act, from voting for a member of the House and from being a candidate. This was to meet what was then and for some years thereafter a very real danger. Americans coming into Upper Canada, with a hatred of monarchical institutions, obtruded themselves among the voters, preached, and, where they dared, practised disloyalty.

Chapter 3 ratified an agreement entered into with Commissioners from Lower Canada as to the division of certain

duties, and an agreement that the Upper Province would not impose duties upon goods imported into Lower Canada and passing into Upper Canada, receiving one-eighth of the duties levied thereon by Lower Canada.

Chapter 4 gave jurisdiction to the Court of King's Bench similar to that of the Court of Exchequer in England in the case of goods seized or contraband. This jurisdiction proved of very great value: the old Term Books are full of cases of confiscation of goods seized as being smuggled.[8]

Chapter 5 is the first of our Registry Acts, establishing a registry office for each county and riding. Memorials only were to be registered, not the deed, etc., itself.

FIFTH SESSION.

The fifth and last Session of this Parliament met May 16th, and lasted till June 3rd, 1795. No records of the proceedings other than the Statutes are extant.

Chapter 1 regulated the weight, etc., of coins and their rating as legal tender.

British Guinea ....weighing 5 dwt. 6 gr. Troy=£1 3s. 4d.
Johannes of Portugal..weighing 18 dwt. 6 gr.
Troy=£4 0s. 0d.
Moidore of Portugal..weighing 6 dwt. 18 gr.
Troy=£1 10s. 0d.
The milled Doubloon or four Pistole piece of
Spain .....weighing 17 dwt. Troy=£3 14s. 0d.
The French Louis d' or (before 1793)....weighing 5 dwt. 4 gr. Troy=£1 2s. 6d.
Etc., Etc.
American Eagle..weighing 11 dwt. 6 gr. Troy=£2 10s. 0d.
American Dollar .....=£0 5s. 0d.

[8] For example, we find in Michaelmas Term, 49 Geo. III., Nov. 14th, 1808, before Scott, C.J., and Powell, J.: In "*The King* v. *John Young*, on the information of Wm. Frith, Esquire, Atty.-Gen'l, proclamation is made in open Court for condemnation of goods seized as forfeited. The Atty.-Gen'l suggesting that it is his intention, on the part of the Crown, to take the goods in specie, this, on proclamation, is, by the Court, considered deficient." Trinity Term, 50 Geo. III., July 11th, 1810, proclamations were made for condemnation of goods seized as forfeited: 106 gals. of brandy, 75½ gals. of rum, 1,000 lbs. of tobacco, 60 lbs. of tea, 50 lbs. of tobacco, called pegan, 88 lbs. of snuff, and 50 lbs. of cotton wool; also 226 gals. of whiskey, 1,600 lbs. of pork, 120 gals. of gin, and the boat tackle and furniture. In Michaelmas Term the proclamations were renewed and, finally, judgment was given for forfeiture.

Many other gold and silver coins are named and valued. The value given to the American dollar shews that in Canadian currency 1 shilling=20 cents (what was known even in my day as Halifax currency).

Counterfeiting was made felony punishable with death on conviction " in His Majesty's Court of his Bench." Uttering, for a first offence, one year's imprisonment and one hour in and upon the pillory in some public and conspicuous place; a second offence was punishable with death as a felon without benefit of clergy. Importation of false coin was to be punished by twelve months' imprisonment. No one was to be compelled to take more than 1 shilling in copper; every payment exceeding £50 currency in gold coin was to be by weight.

Chapter 2 provided for juries at the assizes.

Chapter 3 made further provision for licensing innkeepers.

Chapter 4 altered the place of meeting of the Quarter Sessions and the District Court of the Western District from Detroit, as has already been stated. Detroit was definitely abandoned by the British the following year, under the provisions of "Jay's Treaty," 1794.

Chapter 5 abolished the bounty for killing bears. Chapter 6 provided for Commissioners to treat with Commissioners from Lower Canada as to duties, etc., and chapter 7 further secured those "wages," so often spoken of.

This is the by no means discreditable or insignificant record of the first Parliament of Upper Canada, the only Parliament under Simcoe.

I shall now say something as to some of these statutes.

There was very great reason for the protest of Cartwright and Hamilton. They had caused to be entered upon the proceedings of the Council 3rd June, 1794, a formal protest against the proposed Act which effected the abolition of local Courts, in the geographical situation of the colony, "with a thin population scattered over so immense an extent of country"—all writs issuing from the "fixed place" at which the Court sat, and all proceedings to be there filed. It was indeed provided that where the first process went to the Sheriff of the Home District, fifteen days should elapse between the teste and return, forty days in any other District. But the necessity of "day's journeys" in procuring process, etc., must in the then

condition of the colony have been very annoying; and many must have wished the return of the old Common Pleas Court in their District. But in 1797, by 37 Geo. III. ch. 4, it was provided that the Clerk of the Crown and Pleas should have in every district an office and a deputy whom he should furnish with blank writs, and in which office pleadings should be filed; moreover, a form of writ where special bail should not be required was given. This was made quite clear in 1845 by Statute 8 Vic. ch. 36; it was enacted that the Clerk of the Crown should supply his deputies in every district with writs of *mesne* and final process, except writs in ejectment, and the deputies were directed to issue such writs in the same manner as might be done in the principal office at Toronto. They were also authorized to issue rules upon the Sheriff for return of *mesne* or final process. Then in 1849, the Act 12 Vic. ch. 63 altered the office of Clerk of the Crown and Pleas, and made the several Clerks of the County Courts *ex-officio* Deputy Clerks of the Crown and Pleas in the Queen's Bench and Common Pleas—so that at length there was in each county town an office where process could be sued out. Thus, most of the advantage of a local Court and all the advantage of a strong central Court were combined.

In the Statute concerning coins, reference is made to standing in the pillory. This time-honored punishment in the English law might be a triumph for the prisoner, or a capital punishment, according to the feeling of the populace. I find instances of the punishment being actually inflicted or at least ordered in Upper Canada, *e.g.*, a case mentioned by Read in his life of Chief Justice Elmsley, page 46; a prisoner convicted at New Johnstown of perjury, Sept. 11th, 1793, was sentenced to be pilloried three times.[9] The pillory was abolished with us in 1841, by 4 and 5 Vic. ch. 24, sec. 31.

[9] A case well known to all students of the Constitutional History of Canada is the following:—

In Michaelmas Term, 60 Geo. III., Nov. 8th, 1819, *The King* v. *Bartimus Ferguson*, the prisoner was sentenced to pay a fine of £50, province currency, and to be imprisoned in the common gaol at Niagara for 18 months; in the first of these months he was to stand in the Public Pillory between the hours of 10 a.m. and 2 p.m. At the expiration of the term he was to give security for good behaviour for seven years himself, in £500, and two sureties in £250 each, and to be imprisoned until the fine was paid and security given.

(Present: Powell, C.J., Campbell and Boulton, JJ.)

The prisoner's counsel was Mr. Thomas Taylor, the reporter and editor of Taylor's Reports, called in Hilary Term the same year. He himself was the editor of the Niagara Spectator, and in his journal, in his absence from home, had appeared a letter written and

A second conviction for uttering, meant felony "without benefit of clergy." No lawyer is at all likely to think with some popular writers that this means "without the benefit of clerical attention and advice." Of course it originally was the privilege allowed to a Clerk in Holy Orders, when prosecuted in the temporal Courts, of being discharged from such Court and turned over to the ecclesiastical Courts—in other words to get clear almost altogether. This privilege was gradually extended to all who could read, and many a notorious rascal escaped well-merited punishment by reading his "neck-verse," possibly by a recently learned accomplishment. Ultimately, in 1706, by 6 Anne, ch. 9, the privilege was extended to all, whether they could read or not.

This privilege did not extend to all felonies, but only to capital felonies, and even of these some were "without benefit of clergy"; moreover, by an early statute (1488), 4 Henry VII., ch. 13, laymen allowed their clergy were burned in the hand, and could not claim it the second time, and the practice grew up of imprisoning for life clergymen where the offence was heinous and notorious.

"Benefit of Clergy" was abolished in England by sec. 6 of the Criminal Law Act of 1827, and in Upper Canada in 1833 by 3 William IV., ch. 3, sec. 25. This Act provided that all crimes made by the Act itself punishable with death—murder and accessory before the fact to murder, rescue of one committed for or found guilty of murder, rape, carnal knowledge of a girl under ten, sodomy, robbery of the mail, burglary, arson, riot after the reading of the Riot Act, destruction of His Majesty's dockyards, etc. (a sufficiently long list indeed)—should be so punished, but that all other felonies should be punishable by banishment or imprisonment for any term not exceeding 14 years. Thus the counterfeiter escaped the punishment of death, to the great grief of many very good and very intelligent people who thought that a death sentence for the offender was the only safeguard for society.

Simcoe returned to York at the close of the fifth Session; a short time after his arrival, he received an answer to his request of the previous December for leave of absence on the ground of ill-health. His request was granted in most flattering terms. Causing Peter Russell to be sworn in as Admin-

signed by Gourlay, animadverting on the Administration of the day. Ferguson was indicted for libel, and found guilty, with the result we have seen. On his making a humble submission, he was relieved of some part of the penalty and imprisonment.

istrator, he left York for Quebec, and thence sailed for London in September, 1796, never to return. After effective service in the West Indies, he died at Exeter in 1806.

A man of great force of character, a devoted patriot, holding his Church entitled to loyalty second only to his King, a soldier of valor and capacity, his mistakes were for the most part the mistakes of his time and his rank, and he well deserves the encomium of his epitaph in Exeter Cathedral, that "in his life and character the virtues of the hero, patriot and Christian were eminently conspicuous."

Of the Executive Council I have said little; that body took no part in legislation. All its members, however, were Legislative Councillors.

In the Houses, even at this early date, we see differences of opinion, the Council inclining to the aristocratic, the Assembly to the democratic view. The embryo of an opposition also makes its appearance, even in the select body. Hamilton and Cartwright seem to have acted together—we have seen that they joined in a protest against the formation of a great central Court, the King's Bench; Simcoe had no hesitation in calling Hamilton a republican, and Cartwright he thought little, if any better. The custom of dubbing a political opponent a traitor began very early in Upper Canada. Simcoe also intimated that Cartwright's position as Judge of the Court of Common Pleas for his District had something to do with his objection to the abolition of these Courts. However, Hamilton was created Lieutenant of Lincoln, and Cartwright of Frontenac, by the Lieutenant-Governor; so we may judge that his suspicions of their loyalty were but temporary.

This was the only Parliament which met at Niagara—Simcoe had changed the old name into Newark. The first session was held, it is said, in the Freemasons' Hall,[10] all the others in what Simcoe calls "sheds"—additions built to the Barracks of Butler's Rangers by the garrison.

Simcoe recognized that Newark was too close to the border to be the permanent capital; in 1793 he made a some-

[10] Some say that the first session of Parliament was holden in "a marquee tent, one remove in the scale of ascending civilization from the aboriginal council-lodge," some, that Navy Hall was the scene of the meeting.

William Dummer Powell, Chief Justice of Upper Canada, says, in his MSS. Narrative, now in the possession of his great-grandson Aemilius Jarvis, Esquire, of Toronto, that the House met in canvas houses, which had been prepared for and used by Banks and Solander, in their voyage of discovery, i.e., with Captain Cook, 1768-1771.

what extended trip into the interior, and decided that a spot at or near to what is now London should be the future capital. In the same year he fixed on Toronto as a suitable place for fortification. He changed its name to York, in consideration and compliment of the Duke of York's victories in Flanders. The Duke of York was a brother of George III., and had, earlier in the year, achieved some success against the French; but he was recalled not long after, and placed in charge at London. He was no great General, but as Administrator he was a success, doing much for the comfort of the soldiers, whether on active service or on pension.[11]

Dorchester, the Governor-General of Canada, overruled Simcoe's selection of a site for the capital, and chose York, which, with a change to its old name of Toronto in 1834, remained such—with intermittent intervals after the Union of the Canadas in 1841-1842—till the present time.

The second Parliament met at York, not at Newark.

The state of legislation as left by the first Parliament deserves consideration.

The security of the Province from foreign aggression was, so far as was possible, secured by the Militia Acts providing for infantry, cavalry and navy.

Simcoe rather favoured the formation of a hereditary aristocracy who should have the right of being Lieutenants of their counties. This fortunately did not come to pass, but like the provision in the Act, 31 George III., ch. 31, looking to hereditary seats in the Legislative Council, was allowed to pass out of notice. Upper Canada has never been favourable to hereditary titles.

The loyalty of the Members of Parliament was secured by excluding aliens from House and electorate. Payment to members also had been provided for on a moderate but sufficient scale.

The Courts were practically what they are now, with the exception that in civil matters all Judges are now, even in the case of petty claims, trained barristers. The Courts of

[11] Every lover of Sir Walter Scott will remember, in the amusing introduction (1819), to the first edition of the "Legend of Montrose," his description of Sergeant More M'Alpin, who was induced to remain at Gandercleugh when on his way with his sister to Glasgow to take passage to Canada. The Sergeant, an old pensioner, "seldom failed to thank God and the Duke of York, who had made it much more difficult for an old soldier to ruin himself by his folly than had been the case in his younger days."

Requests, presided over by magistrates, corresponded to our Division Courts; the District Court to our County Courts; the King's Bench to the High Court Division of the Supreme Court of Ontario. The ultimate Court of Appeal was then composed of laymen, or it might be so constituted, and this was certainly objectionable—while the Court of King's Bench had the defects already referred to. The English law was introduced, civil as well as criminal.

Standards of weight and measure, coin, legal tender, had been set and fixed, tolls in mills regulated, provision made for killing dangerous wild animals, tavern and distilling licenses had been regulated, former invalid marriages rendered valid, and provision for the future solemnization of marriage made; practitioners in the Courts were also provided for, and physic and surgery not forgotten. In addition to the ordinary Courts of law, a Court of Probate with Surrogate Courts was provided. The criminal law was not neglected, meetings of the Quarter Sessions were arranged for and Court Houses and gaols directed to be built. A satisfactory adjustment was made with Lower Canada through which practically all imports came, except those from the United States. The curse of slavery was doomed to early extinction—a result in itself well worth all the first Parliament of Upper Canada cost in time, labour and money.

The first foundations of our municipal system were laid—afterwards to play such an important part in our national life. A later Governor called municipal corporations "Sucking Republics"; they are not that, but assuredly they are the very nursery for public spirit and capacity to say effectively what a freeman thinks.

For a beginning, the provision for the registering of documents must be considered creditable. The Registry system now much elaborated has been invaluable in saving trouble and money.

I should not omit the provision for highways. It must be said that highways under local and municipal control have not been a brilliant success. Much of the failure has no doubt been due to the rich soil of a great part of the Province. A reverend gentleman who was stationed at Thornhill in the third decade of the nineteenth century, complained that

there were no stones to make a road with.[12] It may have been that nothing better could be devised, but there can be no doubt that the roads of the Province have been no credit to us. What could be done by a central authority is seen in what was done. Practically the only roads which deserved the name were those built by the Government—Yonge Street, built by the soldiers, Dundas Street from Burlington Bay (Coote's Paradise) to London, and then from Burlington Bay to Toronto, built in the same way; the Danforth Road built on contract by Danforth, an American, in 1799-1800, from York to the Bay of Quinte.

The neglect of municipalities led to the formation of companies to build toll-roads, plank or gravel, of which many were incorporated in the 30's and 40's—and their works do follow them even to the present. Perhaps there is nothing which pays a country better than good roads; and it is to be regretted that for so many years road building was neglected.

But everything cannot be done by a poor country, and perhaps no better solution offered itself to our first legislators. And when all is said, they certainly have earned the admiration and gratitude of all who have lived in the Province since their time.

[12] "Observations on Professions, Literature, Manners and Emigration in the United States and Canada . . . in 1832, by the Rev. Isaac Fidler, for a short time missionary of Thornhill on Yonge street, near York, Upper Canada, London . . . 1833."

In this most entertaining volume, written by a clergyman of the Church of England, is found the following:—

"I must here explain . . . that the roads in many parts of Canada are composed entirely of earth, of a rich soil, among which no stones or gravel is intermingled. Many farms along Yonge street, of two hundred acres in extent, have not so much stone on them as would serve to lay the foundation of a house. This is a proof of the fineness of the land; but also of the paucity of materials for making solid and substantial turnpikes. . . . The heavy rains make a road a complete puddle, which affords no sure footing to man or beast."

Most Upper Canadians have seen such roads; and they are not few or far between now, eighty years after Mr. Fidler wrote.